



NATURAL RESOURCES DEFENSE COUNCIL

December 1, 2009

The Honorable Ken Salazar
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

RE: Recommendations for the Federal Bay-Delta Work Plan

Dear Secretary Salazar and Members of the Federal Bay-Delta Leadership Committee:

On behalf of the Natural Resources Defense Council, which has 1.2 million members and activists nationwide, 250,000 of which reside in California, I am writing to provide recommendations on the scope of the Federal Bay-Delta Work Plan. NRDC greatly appreciates the Administration's renewed focus and commitment to science-based approaches to restoring and protecting the Bay-Delta estuary and meeting California's reasonable water needs. We greatly appreciate the Administration's investment of Stimulus Act (ARRA) monies in real solutions to meet California's water needs, rebuild our salmon fisheries, and protect the environment. Consistent with those investments, NRDC strongly encourages the Administration to focus the Federal Work Plan on bold and innovative actions to complement the new policies and processes established by California's recently enacted landmark water policy reform legislation, which significantly strengthened environmental protections in the Delta.

The recent State legislative package establishes a new policy (Cal. Water Code § 85021) of reducing reliance on water exports from the Delta and investing in water efficiency, recycling, and other regional water supplies to meet the State's future water needs. The package also establishes an ambitious program to reduce urban per capita water use in California by 20 percent by 2020. Numerous sources demonstrate that the future of California's water supply will depend on investments in water efficiency, low impact development, water recycling, and groundwater cleanup and recharge. These tools, which NRDC calls the "Virtual River", can yield far more water than has ever been exported from the Delta, and are the most cost effective, quickest, and most environmentally friendly way of meeting future needs. We therefore strongly encourage the Federal Work Plan to prioritize the development of water efficiency, water recycling, and similar projects that complement these new State policies and existing federal policies.

These new laws also make restoration of the Bay-Delta estuary and its native fisheries a co-equal goal for all Delta planning efforts (complimenting the requirements of section 3406 of the CVPIA) impose significant new requirements on the Bay Delta Conservation Plan (BDCP), require the highest level of ecosystem protection in the Delta, and establish new governance entities and planning requirements for the Delta. Federal actions in the Delta should focus on reforming the BDCP process to ensure that the requirements of state and federal law are met,

coordinating federal flood management projects in the Delta with ecosystem restoration and reservoir reoperation (where appropriate), and participating in the new processes and governance structures established by these state laws.

Finally, because the federal government's legal obligations under the Central Valley Project Improvement Act ("CVPIA", Title 34 of P.L. 102-575) and the Endangered Species Act span from upstream reservoirs to the pumping plants in the Delta, we strongly encourage the Work Plan to include actions and activities upstream, as well as in the Delta, focused on implementing the two recent biological opinions on water project operations, the San Joaquin River Restoration Settlement Act, and the CVPIA.

In the pages that follow, we offer more detailed recommendations for the Federal Work Plan.

Strengthening Existing Requirements and Making New Investments in Water Conservation and Efficiency, Water Recycling, and Other Regional Water Supply Projects, in Order to Reduce Reliance on Water Supplies From the Delta and Meet California's Water Supply Needs:

Improving water efficiency by Central Valley Project (CVP) contractors is an essential element in meeting California's water supply needs, and should be a cornerstone of the Federal Work Plan. While some CVP contractors have made significant investments in drip irrigation and other technologies and use water more efficiently, other contractors have significant room for improvement. Improving water use efficiency can often lead to financial benefits for the contractors; for instance, last year the Bureau of Reclamation (Bureau) gave an award to Reclamation District 108 for its successful water conservation program, which allowed the district to plant 100% of its acreage with a 75% water allocation, resulting in over \$300,000 in payments to district farmers each year.

In particular, under section 3405(e) of the CVPIA, the Bureau is required to update its water conservation measures no less than every three years. The Federal Work Plan should include a public process to update the best management practices required by CVP contractors (including agricultural, water rights, and municipal and industrial customers) and the Bureau should require compliance with these new requirements, in order to ensure that water is being used most efficiently. Likewise, the Bureau should reform the water needs assessment process to better account for alternative water supplies and improved water efficiency and conservation by contractors, and these reforms should be required as conditions of new or reformed water supply contracts. The Work Plan also should seek to expand low interest loans and grants for water efficiency projects through federal CALFED funding, the Bureau's Water Conservation Field Service, and the Department of Agriculture's programs.

Likewise, expanding and implementing the Bureau of Reclamation's ("Bureau") Title XVI water recycling program is essential to meeting California's water needs in a sustainable manner. We greatly appreciate the Administration's investment of stimulus funding for 26 water recycling projects in California. However, the Title XVI program should become more institutionalized as an essential part of the Bureau. We strongly encourage the Administration to develop criteria and structures to be able to evaluate and prioritize potential projects, enhance the ability to provide technical assistance and expertise to local municipalities and water districts to develop new

projects, and institutionalize water recycling projects as a core element of the Bureau's work. In addition, the Federal Work Plan should evaluate new funding and planning to assist local municipalities and districts in the development of new water recycling projects. One project that deserves particular consideration would be upgrading and converting the Sacramento Wastewater Treatment Plant to become a water recycling plant, and the Work Plan should consider innovative tools, such as low interest loans that would be repaid as the plant sells recycled water for beneficial use, to fund expansion of the Title XVI program.

In addition, there are several regional water supply projects that should be priorities for completion under the federal Work Plan, including the Friant Kern Canal Correction project, the Friant-Kern Canal Reverse Flow project, and the Red Bluff Pumping Plant project. These regional water supply projects can help reduce reliance on the Delta, improve regional self-sufficiency, and meet California's water needs in a sustainable manner. The Work Plan should also include the development of a programmatic framework for water transfers that minimizes and eliminates adverse impacts on wetlands and wildlife, as transfers of water saved as a result of improved water use efficiency can help minimize impacts of drought and meet other needs.

Reforming the Bay Delta Conservation Plan (BDCP), Coordinating With State Delta Governance Institutions, and Participating in the new Planning Processes established by the State Water Policy Reform Legislation:

Federal participation with the new state governance entities and Delta planning efforts will be critical to their success, and we encourage the Work Plan to include federal involvement in these efforts. In particular, we encourage NMFS, USBR, EPA and FWS to lend their expertise in the informational proceeding to be held by the State Water Resources Control Board in the coming months on the water flows necessary to protect public trust resources in the Delta. *See Cal. Water Code § 85086(c)(1)*. In addition, these agencies, and the Army Corps of Engineers, should also dedicate substantial resources to partnering with the Delta Stewardship Council and the State in developing the Delta plan, which is required to be completed by January 1, 2012. *Id.* §§ 85300 *et seq.* Federal participation would be welcomed in the other processes and planning efforts that are established in the state legislation, as would coordination with these new governing entities and new science bodies.

Reforming the BDCP process, so that it can successfully meet the requirements of State and federal law, is critical to the long term health of the Delta, California's salmon fishery, and our water supply. To date, the process lacks transparency, inadequately involves all stakeholders, and is primarily driven by water contractors. The state legislative package included significant new requirements on the BDCP process, which should help ensure that a realistic range of alternatives is considered, that the highest standards for ecosystem protection are met, and that the best available science is used in that process. *Cal. Water Code §§ 85320 et seq.*

However, additional reforms to the BDCP process are necessary to achieve the goals of this state legislation and to meet the requirements of state and federal law, including the CVPIA. In particular, BDCP is proposing changes to the operations of the CVP and the use of the Bureau's water rights; however, those water rights are held by the Secretary for the benefit of all

Californians, and the CVPIA mandates that the Secretary operate the CVP to meet numerous requirements.

As such, the Federal Work Plan should focus on reforming the BDCP to ensure that: (1) the proper applicants (the Bureau and California Department of Water Resources, which operate the water projects and hold the water rights for them) direct the BDCP process, eliminating the management and steering committees; (2) sound science is used in the BDCP process, including a commitment for independent peer review of the draft BDCP plan to ensure the use of sound science; (3) it utilizes a transparent, public process that involves all stakeholders equally, without preconditions (such as requirements to sign the Planning Agreement); (4) all documents, proposals, and analyses, including analyses by consultants, are publicly available; (5) BDCP meets the requirements of the CVPIA and other legal obligations; and (6) meaningfully considers a full range of alternatives.

Finally, the Federal Work Plan should also include greater attention to cleaning up and protecting water quality in the Delta, from drainage-impaired lands in the San Joaquin Valley, and in drinking water for communities in the San Joaquin Valley. The State is obligated under the Clean Water Act and state law to complete its triennial update of the Bay Delta Water Quality Control Plan, and EPA should ensure that the plan adequately protects water quality and designated beneficial uses, in light of the new biological opinions and new scientific research on the Pelagic Organism Decline (POD) and other efforts. Likewise, EPA should work with the State to ensure effective implementation and enforcement of TMDLs and water quality standards, strengthen the irrigated lands program to reduce polluted runoff, and assist in developing projects to protect and restore water quality, including upgrading and converting the Sacramento Wastewater Treatment Plant to a recycled water plant, in order to reduce potentially harmful discharges and increase available water supplies.

Protecting, Restoring, and Doubling Salmon Fisheries and other Fish, Wildlife and Habitats in the Delta, San Joaquin River, Sacramento River, and their Tributaries:

Implementing the recent biological opinions issued by the Fish and Wildlife Service and National Marine Fisheries Service should be another priority for the Federal Work Plan. These biological opinions reversed the junk science used by the prior Administration and have undergone numerous rounds of peer review to ensure that they are based on sound science. They not only protect listed species, but they also provide ancillary protections for the fall run Chinook salmon fishery, and as a result the biological opinions are strongly supported by fishing communities, environmental organizations, and farmers and other interests in the Delta. The two biological opinions establish several working groups and processes that must be accomplished in the near term, including: floodplain and other habitat restoration in the Delta and in Battle Creek; repair of the Spring Creek Temperature Control Curtain; establishing working groups on fish passage, American River temperature improvements, and other engineering work; hatchery operations reform; and real time operations to protect listed species. Successfully defending these biological opinions in court and in Congress, and implementing them on the ground, should be a key component of the Federal Work Plan.

In addition to protecting and restoring endangered species, the Federal Work Plan should emphasize restoring and doubling fall run Chinook salmon, which form the backbone of the State's fishing industry, pursuant to the Secretary's obligations under the CVPIA. In early 2009, the CVPIA Independent Review Panel released its final report on the CVPIA fisheries program. As the report notes, there have been several success stories in the implementation of the CVPIA, such as construction of the temperature control device at Shasta and restoration of Butte Creek. However, the report concludes that the program has not achieved its primary goals, nor has it fully utilized its existing authorities. Although salmon populations rebounded in the 1990s thanks in part to CVPIA implementation, these gains have been jeopardized in recent years. For example, as a result of record low numbers of salmon returning to the Central Valley, California's salmon fishery was closed the past two years, for the first time in the State's history, leading to estimated economic losses of \$279M and the loss of more than 2,700 jobs in 2009 alone. NRDC strongly encourages the Department to implement the Independent Review Panel's recommendations to strengthen the CVPIA program, particularly: (1) reviewing and revising the policies and plans that underlie the program, including the b(2) policy and AFRP plan, in order to take a more systematic, comprehensive approach to restoring fall run Chinook salmon and other anadromous species that fully utilizes the agencies' authorities.

Finally, we encourage the Federal Work Plan to continue the federal commitment to, and ensure adequate resources for, implementation of the San Joaquin River Settlement Act (part of P.L. 111-11, the Omnibus Public Lands Bill). This legislation authorized the Department's implementation of the landmark court settlement, which will restore river flows, return threatened spring run Chinook salmon to the San Joaquin, and implement water supply measures to reduce or minimize impacts to the region's farmers. The Administration should devote substantial effort to both the Restoration and Water Management goals of the Settlement.

Integrate Federal Planning for Flood Management with Reservoir Reoperation (where possible) and Habitat Restoration:

Improving flood protection in the Delta and Central Valley, and integrating those improvements with floodplain habitat restoration, should be another element of the Federal Work Plan. The Central Valley Flood Management Planning (CVFMP) Program is required by State law to create a plan to address California's dysfunctional flood management system by 2012. While the primary focus of the plan is to improve flood protection through system-wide assessment, re-design and re-operation, the plan is supposed to take into account the protection and restoration of floodplain habitat. In light of the flood control obligations of the Army Corps of Engineers and recent court decisions regarding the interplay of the National Flood Insurance Program and the Endangered Species Act, the CVFMP and other State planning efforts in the Delta provide a unique opportunity for federal, state, and local governments, reclamation districts, and other stakeholders to work together to reduce the risks of flooding and failed levees while also restoring floodplain habitat to benefit listed species while reducing the risk of flooding. One such opportunity is the creation of a flood bypass in the South Delta. Implementing these solutions may also allow for reservoir reoperation that reduces the need for flood control storage in existing reservoirs, which can increase water supplies available for human use, as well as for ecosystem restoration.

Reforming water supply contracts to improve reliability and rationalize expectations:

Much of the conflict over California's limited water resources is exacerbated by the Bureau's 25- and 40-year contracts with water users that promise to deliver unrealistic amounts of water.

These contracts can and should be reformed to allow water users to plan and invest according to a realistic set of expectations, to increase incentives and requirements for improved water use efficiency, and to reduce the pressure on water agencies to sacrifice ecosystem health for short-term gain. We urge the Bureau to revisit its existing and pending long-term contracts under the terms of the new delta smelt, salmon, and steelhead biological opinions, and to reform contracts with these realities, and the likely impacts of climate change on water supplies, in mind. Key reforms include realistic contract quantities, an increased emphasis on water conservation by all CVP water users, and pricing and repayment reforms to incentivize increased water use efficiency.

In conclusion, thank you for the opportunity to submit recommendations for the California Bay-Delta Federal Work Plan. NRDC greatly appreciates the Administration's renewed engagement on California water issues, and we look forward to working with you in the coming years to protect and restore California's fish and wildlife and to develop sustainable water supply solutions for the state.

Sincerely,

A handwritten signature in cursive script, appearing to read "Doug Obegi".

Doug Obegi